IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 15TH JANUARY 2007 / 25TH PAUSHA 1928

R.C. Rev..No. 16 of 2007()

RCA.34/2001 of II ADDL. DISTRICT COURT, TRIVANDRUM
RCP.93/2000 of RENT CONTROL COURT, TRIVANDRUM
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PETITIONER/APPELLANT/COUNTER PETITIONER:

LAKSHMIPATHI, S/O.MUTHIAN CHETTIAR,
RESIDING AT T.C.15/1284, VAZHUTHACAUD,
THIRUVANANTHAPURAM.

BY ADV. SRI.K.RAMAKUMAR
SRI.T.RAMPRASAD UNNI

RESPONDENTS: RESPONDENT-PETITIONER:

SMT. IRENE JALAJA ALOSIOUS,
RESIDING AT T.C.15/1875, FOREST OFFICE LANE,
VAZHUTHACAUD, THIRUVANANTHAPURAM.

BY /

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 15/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

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R.C.R. NO. 16 OF 2007

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Dated this the 15th day of January 2007

ORDER

Udayabhanu,J

The Revision Petitioner is the tenant who is under orders of eviction as concurrently found, on the application of the landlord under section 11(3) of the Kerala Buildings (Lease & Rent Control) Act, 1965. The premises are required for the husband of the landlord who has returned from Saudi Arabia where he was working as an air condition mechanic. The establishment proposed to be started in the premises is for a service centre for refrigeration and air conditioning. The courts below found on the consideration of the evidence adduced that the bona fide need of the petitioner stand established. The tenant/revision petitioner is in possession of premises on a monthly rent of Rs. 300/- wherein he is running a medical shop. It is the contention of the Revision Petitioner herein that the husband of the landlord was not examined. We find no merit in the above contention especially as

the same has not been raised and considered by the courts below. The landlord has testified as to the impending requirement of her husband who is depending on her for the premises.

2. So far as the other contention raised before the courts below with respect to the 1st proviso to section 11(3) that she is in possession of another premises and that RCP is pending with respect to another premises and an order has been passed in her favour, it was found that the appellate proceedings are still pending and she has not obtained vacant possession and that the other premises is situated on the rear side and that the landlord is residing therein vide the Commissioner report. The other contention pressed before this court is with respect to the protection of the second proviso to section 11(3) of the Act. The Rent Control Court has found from the evidence of the respondent himself that he is quite well off and that he owns a car etc. The court found, in the absence of any objective evidence as to the source of his livelihood, that he has not

established the same. It is admitted that he is an income tax assessee. But he has not produced his income tax returns. Rightly it was held that he is not entitled to the benefit of the first limb of the 2nd proviso to section 11(3). So far as the second limb is concerned we find that the landlord has testified as to the availability of tahe alternative premises in the vicinity i.e., one belonging to a film star Maniyan Pilla Raju and the other one Ramaswamy. The tenant, when testified before the court, has admitted that he has not made any enquiry with respect to the above rooms. He has confined to Ext. X_1, the certificate issued by the Tahsildar as to the non availability of any building in the area as per the register kept by him in his capacity as Accommodation Controller. The above document is not even proved by examining the Tahsildar.

3. We find no reason at all to disturb the findings of the courts below. The revision petition is liable to be dismissed at the threshold. In the result, Rent Control Petition filed is dismissed in limine.

4. Considering the plea of the counsel for the Revision Petitioner/tenant that he required 6 months time to shift the premises as, according to him, there is elaborate procedure for shifting a medical shop and to find out another accommodation suitable for running the medical shop. In the circumstances, the petitioner is granted six months time to surrender vacant possession of the premises on condition that he shall remit the entire arrears of rent if any and continue to remit rent due in future and file an affidavit before the execution court within 20 days from today onwards undertaking that he shall vacate the premises on or before 05.02.2007.

The R.C.R. is dismissed accordingly.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

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